LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
MAY 11 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

70-162

NO. ~~1699~~

GLENN MICHAEL ROGERS, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

HARDY & SHARPE
Post Office Box 2155
Brownsville, Texas 78520
Attorneys for Petitioner

Alpha Law Brief Co., M & M Bldg., Houston, Texas 77002

INDEX

	Page
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statute Involved	2
Statement of the Case	2
Prayer	3
Certificate of Service	3
Appendix "A" (Opinion of the Court of Appeals for the Fifth Circuit, per curiam)	5
Appendix "B" (Order of the Court of Appeals for the Fifth Circuit denying Motion for Rehearing)	6

LIST OF AUTHORITIES

Leary v. United States, 89 S.Ct. 1532	2, 3

UNITED STATES STATUTES

21 U.S.C. §176(a)	2
28 U.S.C. §1254(1)	1

IN THE

Supreme Court of the United States

NO. _____

GLENN MICHAEL ROGERS, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a Writ for Certiorari issue to review the Judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on March 26, 1971.

OPINIONS BELOW

The opinion of the Court of Appeals, per curiam, issued on March 26, 1971 (see Appendix A). The Order denying the Motion for Rehearing was entered on April 12, 1971 (see Appendix B).

JURISDICTION

The jurisdiction of this Court is invoked under 28 United States Code, Section 1254(1).

QUESTIONS PRESENTED

Whether Petitioner's claim of privilege against self-incrimination entered in a prosecution for violation of Section 176(a), Title 21, United States Code, should have been sustained, where the offense alleged was an intrastate transaction which would require Petitioner to incriminate himself under Texas law by complying with the invoicing provision of this section.

STATUTE INVOLVED

The statute involved is Section 176(a) of Title 21, United States Code.

STATEMENT OF THE CASE

The arrest in this case was made at McAllen, Texas, and not at an international border. Petitioner did not have on his person or in his possession any of the marijuana allegedly smuggled in this case.

Petitioner asserted his plea of privilege against self-incrimination to each of the offenses charged in the indictment (R. Volume 1, Page 4). The Trial Court overruled the plea and entered judgment of conviction from which Petitioner appealed to the Circuit Court (R. Volume 1, Page 10).

This Court decided in *Leary v. United States,* 89 S.Ct. 1532, that a Defendant would not be required to incriminate himself for a violation of State law by complying with the invoicing provision of federal law as it related to marijuana. The rationale of the *Leary* decision when applied to this case compels re-evaluation of the claim of Petitioner against self-incrimination in view of the invoicing requirement of Section 176(a) of Title 21. It is im-

portant to note that Petitioner was not arrested at an international border crossing nor was he in possession of any marijuana in question at the time of his arrest. Pursuant to the guidelines of the *Leary* decision, Petitioner is entitled to claim his privilege and, therefore, the prosecution should have been dismissed to protect Petitioner from convicting himself for possession under the law of the State of Texas.

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that this Petition be granted in all things and that the Judgment of conviction be set aside and that he be granted a new trial and for such other relief as he may be entitled in the premises.

GLENN MICHAEL ROGERS, *Petitioner*

HARDY & SHARPE
His Attorneys

By: Thomas G. Sharpe, Jr.
THOMAS G. SHARPE, JR., *Of Counsel*
Post Office Box 2155
Brownsville, Texas 78520

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was served upon the Solicitor General of the United States on this the 23rd day of April, 1971.

Thomas G. Sharpe, Jr.
Thomas G. Sharpe, Jr.

APPENDIX "A"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 30,562

Summary Calendar*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

GLENN MICHAEL ROGERS,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Texas

---

(March 26, 1971)

Before BROWN, Chief Judge, INGRAHAM and RONEY, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

---

* Rule 18, 5th Cir.; Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al., 5th Cir. 1970, 431 F.2d 409, Part I.

1. See NLRB v. Amalgamated Clothing Workers of America, 5 Cir. 1970, 430 F.2d 966.

APPENDIX "B"

United States Court of Appeals

FIFTH CIRCUIT

Edward W. Wadsworth
Clerk

Room 408-400 Royal St.
New Orleans, La. 70130
(504) 527-6514

Office of the Clerk

April 12, 1971

TO ALL PARTIES LISTED BELOW

Re: No. 30562 - U.S.A. vs. Glenn Michael Rogers

Gentleman:

You are hereby advised that the Court has today entered an order denying the Petition( ) for Rehearing in the above case. No opinion was rendered in connection therewith. See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

EDWARD W. WADSWORTH,
Clerk

By MARYETTE KEMPFF,
Deputy Clerk

cc: Mr. Thomas G. Sharpe, Jr.
Mr. Anthony J. P. Farris

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1699

GLENN MICHAEL ROGERS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury-waived trial in the United States District Court for the Southern District of Texas, petitioner was convicted of a narcotics violation under 21 U.S.C. 176a. The court of appeals affirmed *per curiam* (Pet. App. A).

Petitioner's sole claim is that the statute is subject to a timely assertion of the privilege against self-incrimination, in support of which he cites *Leary* v. *United States*, 395 U.S. 6. Unlike *Leary*, this is a

smuggling case, in which the statutory presumption available under 21 U.S.C. 176a was not employed (see II R. 2 pp. 264-287, 290);[1] in this circumstance the contention petitioner makes has been repeatedly rejected. See, *e.g.*, *Witt* v. *United States*, 413 F. 2d 303 (C.A. 9), certiorari denied, 396 U.S. 932; *Walden* v. *United States*, 417 F. 2d 698 (C.A. 5); *United States* v. *Houle*, 428 F. 2d 816 (C.A. 5), certiorari denied, 400 U.S. 882.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1971.

[1] "R." refers to the record from the court of appeals.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 429433 745